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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/742,343 | 12/19/2003 | Stephen Gara | THR-5005 USNP | 6427 |

27777 7590 12/04/2006

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| EXAMINER | |
|---|---|
| BIANCO, PATRICIA | |
| **ART UNIT** | **PAPER NUMBER** |
| 3772 | |

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/742,343 | GARA, STEPHEN | |
| | Examiner | Art Unit | |
| | Patricia M. Bianco | 3772 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *18 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 September 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Amendment*

In the amendment filed 9/18/06 the amendments to claims 1, 8, 10, 12, & 17-21, the new figure, and amendment to the Abstract are acknowledged. Claims 1-21 remain pending.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber (3,628,445). Weber discloses a device for irradiation fluids wherein the device is comprised of a first plate (2), a second plate (3), and multiple, evenly spaced dividers (5). The device is fit together as a single unit by attaching the first and second plates to one another to define a chamber. The chamber forms a torturous or serpentine path (see figure 2). Weber teaches that the device may be made of any suitable material and that the device plates are transparent to rays in the wavelength between 3,500Å to 4,500Å which is equivalent to between 350 nm and 450 nm. The device has two ports in communication with the plates and chamber. See entire disclosure.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al. (4,737,140). Lee et al. discloses a U.V. light assembly for use with an extracorporeal blood separation assembly. The U.V. light assembly is comprised of a first and second plates fit together to define a thin cavity to receive blood or separated blood components. The cavity is separated into a serpentine path by multiple, evenly spaced dividers. Lee teaches that the device may be made of polycarbonate and is transparent to UVA rays, which are in the wavelength range between 320 nm and 400 nm. Lee also teaches that a photoactivating agent, such as 8-methoxy psoralen (8 MOP), may be added to the blood or blood component (see col. 7, lines 12-14). It is also taught by Lee that the separated component from the blood can be leukocytes or a buffy coat.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (3,628,445). Weber discloses the invention substantially as claimed, see rejection supra, however, fails to disclose specifically that the plates are made of polycarbonate or acrylic. Weber does teaches that the device may be made of any suitable material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the suitable material to be either polycarbonate or acrylic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Response to Arguments***

Applicant's arguments filed 9/18/06 have been fully considered but they are not persuasive. Applicant argues that since the device of Weber is directed to irradiating alcoholic beverages at an angle to deliver the fluid uphill, the device of Weber does not anticipate the claimed invention and that the device cannot be positioned so that fluid flows with the assistance of gravity. Applicant also argues that the device of Lee does not disclose an arrangement that can allow for gravity assistance throughout the course of the flow of fluids, but rather must use a means that assists the flow thought the chamber. These arguments are not found to be persuasive.

In response to applicant's argument that the devices of either Webster or Lee cannot be positioned to allow gravity to act upon the fluid moving through the device, applicant recites that the device has a port "arranged such that during use, the flow of fluid through out said chamber is assisted by gravity" which is a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The device is capable of being positioned to have a port to used in a manner to deliver a fluid in an inlet and positioning the chamber to allow for gravity to act upon the fluid. The device is a stand-alone unit and it may be positioned in a manner to allow for gravity to act upon the fluids. There is no specific or distinct structural element recited in the application claims that distinguishes the invention from the chambers of Weber or Lee.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Patricia M. Bianco at telephone number (571) 272-4940.

November 27, 2006

Patricia M Bianco
SPE
Art Unit 3772

11/27/06